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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130306200-3200-01]

RIN 0648-BD03

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 102

AGENCY: National Marine Fisheries Service (NMFS) National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 102 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), and amend the Individual Fishing Quota Program for the Fixed-Gear Commercial Fisheries for Pacific Halibut and Sablefish in Waters in and off Alaska (IFQ Program). Amendment 102 and its proposed implementing regulations would create a Community Quota Entity (CQE) Program in halibut IFQ regulatory area 4B (Area 4B) and the sablefish Aleutian Islands regulatory area that is similar to the existing CQE Program in the Gulf of Alaska (GOA). Amendment 102 would also allow an eligible community in Area 4B and in the Aleutian Islands to establish a non-profit organization as a CQE to purchase halibut catcher vessel quota share (QS) assigned to Area 4B and sablefish QS assigned to the Aleutian Islands. The CQE could assign the resulting annual

halibut and sablefish IFQ to participants according to defined CQE Program elements.

An additional proposed revision to the IFQ Program regulations would allow IFQ derived from D share halibut QS to be fished on Category C vessels in Area 4B. These actions are necessary to provide additional fishing opportunities for residents of fishery dependent communities and sustain participation in the halibut and sablefish IFQ fisheries. These actions are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the BSAI FMP, and other applicable law.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA-NMFS-2013-0048, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0048, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. P.O. Box 21668, Juneau, AK 99802–1668.
- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.

- Hand delivery to the Federal Building: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Regulatory Impact Review (RIR) for Amendment 102 and the RIR/Initial Regulatory Flexibility Analysis (IRFA) for the regulatory amendment to allow IFQ derived from D share halibut QS to be fished on Category C vessels in Area 4B are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule may be submitted to NMFS at the above address and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, (907) 586-7228.

SUPPLEMENTARY INFORMATION:

Regulatory Authority

NMFS proposes regulations to implement Amendment 102 to the BSAI FMP, amend the halibut and sablefish IFQ regulations to allow a CQE Program for halibut and sablefish in the Aleutian Islands, allow IFQ derived from D share halibut QS to be fished on Category C vessels in Area 4B, and describe current CQE QS use caps. The North Pacific Fishery Management Council (Council) recommended and NMFS approved the BSAI FMP in 1982 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.). Regulations implementing the BSAI FMP and general regulations governing groundfish appear at 50 CFR part 679. Fishing for Pacific halibut (Hippoglossus stenolepis) is managed by the International Pacific Halibut Commission (IPHC) and the Council under the Northern Pacific Halibut Act of 1982 (Halibut Act). Section 773(c) of the Halibut Act authorizes the Council to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. Such Council-recommended regulations may be implemented by NMFS only after approval by the Secretary of Commerce.

Background on the IFQ and CQE Programs

IFQ Program

The IFQ Program, a limited access privilege program for the fixed-gear halibut and sablefish (Anoplopoma fimbria) fisheries off Alaska, was recommended by the Council in 1992 and approved by NMFS in 1993. Initial implementing rules were published November 9, 1993 (58 FR 59375), and fishing under the IFQ Program began on March 15, 1995. The IFQ Program limits access to the halibut and sablefish fisheries

to those persons holding QS in specific management areas. The IFQ Program for the sablefish fishery is implemented by the BSAI FMP and Federal regulations at 50 CFR part 679 under the authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of the Halibut Act. A comprehensive explanation of the IFQ Program can be found in the final rule implementing the program.

The IFQ Program changed the management structure of the fixed-gear halibut and sablefish fishery by issuing QS to qualified persons who owned or leased a vessel that made fixed-gear landings of those species from 1988 to 1990. Halibut QS was issued specific to one of eight IPHC halibut management areas throughout the Bering Sea and Aleutian Islands (BSAI) and GOA, and four vessel categories: freezer (catcher/processor) category (A share); catcher vessel greater than 60 ft. length overall (LOA) (B share); catcher vessel greater than 35 ft. to 60 ft. LOA (C share); and catcher vessel less than or equal to 35 ft. LOA (D share). Sablefish QS was issued specific to one of six sablefish management areas throughout the BSAI and GOA, and three vessel categories: freezer (catcher/processor) category (A share); catcher vessel greater than 60 ft. LOA (B share); and catcher vessel less than or equal to 60 ft. LOA (C share). The amount of halibut and sablefish that each QS holder may harvest is calculated annually and issued as IFQ in pounds on an IFQ permit. An IFQ halibut permit authorizes participation in the fixed-gear fishery for Pacific halibut in and off Alaska, and an IFQ sablefish permit authorizes participation in most fixed-gear sablefish fisheries off Alaska. IFQ permits are issued annually to persons holding Pacific halibut and sablefish QS or to those persons who are recipients of IFQ transfers from QS holders.

The IFQ Program was structured to retain the owner-operator nature of the fixed-gear halibut and sablefish fisheries and limit consolidation of QS. The QS may be permanently transferred or leased with several restrictions by type of QS and management area. Only persons who were initially issued B, C, and D share catcher vessel QS, S-type corporations formed by initial issuee individuals, or individuals who qualify as IFQ crew members are allowed to hold or purchase catcher vessel QS. Thus, the IFQ Program restricts holders of catcher vessel QS to individuals and initial recipients. With few exceptions, individual QS holders are required to be on board the vessel to fish the IFQ.

Although the IFQ Program resulted in significant safety and economic benefits for many fishermen, since the inception of the IFQ Program, many residents of Alaska's small, remote, coastal communities who held QS have transferred their QS to non-community residents or moved out of these communities. As a result, the number of resident QS holders has declined substantially in most remote coastal communities throughout Alaska. This transfer of halibut and sablefish QS and the associated fishing effort from the small, remote, coastal communities has limited the ability of residents to locally purchase or lease QS and reduced the diversity of fisheries to which fishermen in these communities have access. The ability of fishermen in these communities to purchase QS or maintain existing QS may be limited by factors shared among and unique to each community. Although the reasons for decreasing QS holdings in a community may vary, the net effect is overall lower participation by residents of these communities in the halibut and sablefish IFQ fisheries. The substantial decline in the number of resident QS holders and the total amount of QS held by residents of small, remote,

coastal communities may have aggravated unemployment and related social and economic conditions in those communities.

CQE Program

In 2001, the Council recognized that a number of small, remote, coastal communities, particularly in the GOA, were struggling to remain economically viable. The Council developed the CQE Program to provide these communities with long-term opportunities to access the halibut and sablefish resources. The Council recommended the CQE Program in the GOA as an amendment to the IFQ Program in 2002 (Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP)), and NMFS implemented the program in 2004 (69 FR 23681, April 30, 2004).

The CQE Program allows 45 small, remote, coastal communities in the GOA that met historic participation criteria in the halibut and sablefish fisheries to purchase and hold catcher vessel halibut QS in halibut Areas 2C, 3A, and 3B, and catcher vessel sablefish QS in the GOA. Communities eligible to participate in the CQE Program in the GOA need to meet criteria for geographic location, population size, historic participation in the halibut and sablefish fisheries, and be specifically designated on the list of communities adopted by the Council and included in regulation (see Table 21 to Part 679). Additional detail on these criteria is available in the final rule implementing Amendment 66 (69 FR 23681, April 30, 2004).

The communities are eligible to participate in the CQE Program once they are represented by a CQE, which is a NMFS-approved non-profit organization. The CQE is the holder of the QS and is issued the IFQ annually by NMFS. With certain exceptions,

the QS must remain with the CQE. This program structure creates a permanent asset for the community to use. The structure promotes community access to QS to generate participation in, and fishery revenues from, the commercial halibut and sablefish fisheries.

To participate in the CQE Program, an eligible community must first acquire a statement of support from the community governing body, and then form a CQE to represent the community and have that CQE approved by NMFS. After NMFS approval, a CQE may receive catcher vessel QS for the represented community(ies) through NMFS-approved transfers. The eligible communities and the community governing body that recommends the CQE are listed in Table 21 to part 679. Once the CQE holds QS, the CQE can lease the annual IFQ resulting from the CQE-held QS to individual community residents. The CQE Program also promotes QS ownership by individual community residents. Individuals who lease annual IFQ from the CQE could use IFQ revenue to purchase their own QS. The Council believed, and NMFS agrees, that both the CQE and non-CQE-held QS are important in terms of providing community residents fishing access that promotes the economic health of communities.

Current CQE Program regulations include several provisions affecting the use of QS and the annual IFQ by the CQE. Under some provisions, a CQE has the same privileges and is held to the same limitations as individual users. For example, CQE-held QS is subject to the same area use cap that applies to non-CQE-held QS. In other instances, the CQE is subject to less restrictive measures than individual QS holders. For example, the catcher vessel size classes do not apply to QS and the IFQ held by CQEs. In yet other instances, the CQE must operate under more restrictive measures than

individual QS holders, in part to protect existing QS holders and preserve entry-level opportunities for fishermen. A comprehensive explanation of these CQE Program provisions can be found in the final rule implementing the CQE program (69 FR 23681, April 30, 2004).

Based on further review by the Council beginning in 2008, the Council determined that three additional GOA communities met the general criteria listed above for inclusion in the CQE Program. In December 2010, the Council recommended explicitly adding these communities to the CQE Program under Amendment 94 to the GOA FMP. In 2013, NMFS implemented regulations for Amendment 94 to the GOA FMP to add these communities to the CQE Program. Additional detail is available in the final rule implementing the regulatory provisions of Amendment 94 and is not repeated here (78 FR 33243, June 4, 2013).

The Council recommended the CQE Program for the GOA, but not for the BSAI. When the CQE Program was initially adopted by the Council, and implemented by NMFS, it was specifically intended to provide opportunities to GOA communities that had a historic dependence on the halibut and sablefish fisheries in the GOA. The Council considered but did not recommend applying the CQE Program to the BSAI because nearly all small, remote, coastal communities located in the BSAI also participate in the Western Alaska Community Development Quota Program (CDQ Program) that is authorized under section 305(i) of the Magnuson-Stevens Act. The CDQ Program allocates a percentage of all BSAI quotas for groundfish, prohibited species, halibut and crab to CDQ groups that represent 65 coastal communities throughout the BSAI. This allocation to the CDQ Program allows the distribution of benefits from that allocation to

be shared among the residents of the CDQ Program communities. In contrast, the CQE Program requires communities to purchase halibut and sablefish QS for use by community residents. At the time the Council recommended, and NMFS implemented, the CQE Program for the GOA, communities located in the BSAI did not meet the geographic scope, or intent, of the CQE Program. When the Council was requested to consider implementing a CQE program in the Aleutian Islands, there was no similar request for the Bering Sea. Therefore, the Council did not develop a CQE Program for the Bering Sea.

Proposed Actions

This proposed rule would implement two separate actions: 1) amend the BSAI FMP to implement a revised CQE Program in the Aleutian Islands (Amendment 102); and 2) allow D share halibut QS to be fished on vessels less than or equal to 60 ft. LOA in Area 4B. Only Action 1 would require amending the BSAI FMP. A Notice of Availability of Amendment 102 to the BSAI FMP was published on November 1, 2013 ([78 FR 65602](#)), with comments on the FMP amendment invited through December 31, 2013. Written comments may address Amendment 102, the proposed rule, or both, but must be received by December 31, 2013, to be considered in the decision to approve or disapprove the FMP amendment.

Action 1: Aleutian Islands CQE Program

Action 1 would amend the BSAI FMP and revise existing halibut and sablefish IFQ Program regulations to allow a designated non-profit organization to purchase and hold catcher vessel QS on behalf of any rural community located adjacent to the coast of the Aleutian Islands (defined in regulations at § 679.2 as the Aleutian Islands Subarea of

the BSAI) that meets specific qualification criteria. The proposed action would also amend the BSAI FMP and Federal regulations at §§ 679.2, 679.5, 679.41, 679.42, and Table 21 to part 679 to authorize an Aleutian Islands CQE to purchase a limited amount of Area 4B halibut and Aleutian Islands sablefish QS and lease the resulting IFQ.

The Council initiated an analysis to develop a CQE Program for the Aleutian Islands after receiving a proposal from the Adak Community Development Corporation (ACDC) in January of 2010. Specifically, the ACDC requested that the Council modify the existing CQE Program to allow the ACDC to use revenues generated from its holdings of Western Aleutian Islands golden king crab to purchase Area 4B halibut and Aleutian Islands sablefish QS for use by fishery participants delivering to Adak, AK. Under regulations established for the BSAI Crab Rationalization Program (70 FR 10174, March 2, 2005), the Adak Community Entity is designated (50 CFR 680.2) to receive an exclusive allocation of 10 percent of the total allowable catch issued for Western Aleutian Islands golden king crab (§ 680.40(a)(1)). The ACDC was formed by representatives of the community of Adak as the Adak Community Entity to promote the development of fishery related resources, infrastructure, and assets for the community of Adak. The purchase of Area 4B halibut and Aleutian Islands sablefish QS would be consistent with those goals.

Since the military station closed on Adak in 1994, the Aleut Corporation and ACDC have invested significant effort into developing Adak as a commercial center and a civilian community with a private sector economy focused on commercial fishing. As part of that strategy, Adak has pursued a broad range of fisheries development opportunities to encourage a resident fishing fleet and delivery to the shoreside processor

located in Adak. A CQE could add stability to shoreside processing operations that have been subject to periodic closure. After receiving ACDC's proposal, the Council recognized that there may be opportunity for Adak or other similarly situated communities in the Aleutian Islands to maintain and improve access to commercial halibut and sablefish fisheries through a community QS holding program similar to the GOA CQE Program. In December 2010, the Council initiated an analysis of an FMP and regulatory amendment to form a CQE Program specifically for the Aleutian Islands. In February 2012, the Council recommended establishing a CQE Program in the Aleutian Islands that would be similar to the current CQE Program in the GOA.

The proposed action recommended by the Council complies with the Magnuson-Stevens Act National Standard 8 that requires management programs to "take into account the importance of fishery resources to fishing communities...in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities" (16 U.S.C. 1851).

The Council considered comments from the public, NMFS, and the State of Alaska, and incorporated the foundation of the GOA CQE program in developing this proposed action for the Aleutian Islands. As noted earlier, the GOA CQE Program was developed to provide harvest opportunities for small, remote, coastal communities that lacked access to fishery resources. The proposed Aleutian Islands CQE Program is intended to meet that same purpose.

The Council sought to include provisions of the current GOA CQE Program in the proposed Aleutian Islands CQE Program, as the goals of the programs are similar.

After reviewing the applicable criteria for the GOA CQE Program, however, the Council found that the proposed Aleutian Islands CQE Program required limited changes from the GOA CQE Program regulations. Therefore, the basic provisions of this proposed action are similar to those described in the final rule implementing the CQE Program for GOA communities (69 FR 23681, April 30, 2004), and as amended by the final rule implementing Amendment 94 to the GOA FMP and associated regulatory amendments (78 FR 33243, June 4, 2013). Additional information on the criteria considered in developing the proposed Aleutian Islands CQE Program is provided in Section 2.6.2 of the RIR prepared for this proposed action (see ADDRESSES). The provisions of the proposed Aleutian Islands CQE Program are summarized here.

1. Eligible Community

A potentially eligible community would need to meet all the following criteria to participate in the proposed Aleutian Islands CQE Program: a) be located within the Aleutian Islands; b) not be eligible for the CDQ Program; c) have a population of more than 20 and less than 1,500 persons based on the 2000 U.S. Census; d) have direct access to saltwater; e) lack direct road access to communities with populations of more than 1,500 persons; f) have historic participation in the halibut and sablefish fisheries; and g) be specifically designated on a list adopted by the Council and included in regulation (see Table 21 to part 679). These specific criteria for community eligibility, with the exception of criteria a) and b), would be identical to those implemented for the GOA CQE Program.

Criterion a) would exclude communities not located within the Aleutian Islands. All communities other than Adak, Atka, and Attu Station would be excluded.

Criterion b) would exclude any CDQ communities located in the Aleutian Islands because these communities receive direct allocations of halibut and sablefish catcher vessel QS through their representative CDQ groups. Atka is the only CDQ community in the Aleutian Islands, so it would not be eligible under criterion b) of the proposed Aleutian Islands CQE Program. Therefore, only Adak and Attu Station would still be eligible for consideration under criteria a) and b).

Attu Station and Adak would also be eligible under criterion c). The Council reviewed the population of Attu Station and Adak using both the 2000 U.S. Census, the most recent census data available at the time the CQE Program was implemented, and the more recent U.S. Census data from 2010. Neither Adak nor Attu Station's population was less than 20 or greater than 1,500 persons in the 2000 or the 2010 U.S. Census; therefore, their eligibility for the proposed Aleutian Islands CQE Program would not be affected by the use of 2000 U.S. Census data rather than more recent 2010 U.S. Census data.

Adak and Attu Station also meet criteria d) and e).

Criterion f) would exclude the community of Attu Station. Attu Station is a U.S. Coast Guard station on the northeast coast of Attu Island, at the far western end of the Aleutian Chain. There is no record of any resident of Attu Station meeting the standard for historic participation established under the CQE Program, which requires at least one commercial landing of halibut or sablefish as documented by the State of Alaska Commercial Fisheries Entry Commission (CFEC) during 1980 through 2000. In addition, NMFS has no record of any commercial landings of halibut or sablefish by any resident of Attu Station since 2000. According to CFEC records, several halibut permit

holders identified Adak as their city of residence during the period 1980 through 2000, and several of these residents made at least one commercial landing of halibut or sablefish during 1980 through 2000. Therefore, Adak meets the requirements of criterion f).

Adak meets proposed criteria a) through f). In summary, Adak is located in the Aleutian Islands; is not a CDQ community; has a 2000 U.S. Census population of 316 people (and a population of 326 according to the 2010 U.S. Census); has direct access to saltwater; lacks direct road access to communities with a population more than 1,500 persons; and residents of the community have documented historical participation in the commercial halibut and sablefish fisheries.

Criterion g) specifies that a new CQE-eligible community in the Aleutian Islands would be established in regulation by being added to the existing table of CQE communities in regulation (Table 21 to part 679). This criterion would ensure that if an Aleutian Islands community other than Adak appears to meet the eligibility criteria but is not specifically designated on the list of communities adopted by the Council, then that community would have to apply directly to the Council to be included. In this event, the Council may modify the list of eligible communities adopted by the Council through a regulatory amendment. Under this proposed rule, Table 21 to part 679 would be amended to include Adak as the only eligible Aleutian Islands CQE community.

2. Community Quota Entity

CQE Program regulations at § 679.2 and § 679.41(l) define a CQE as a non-profit organization incorporated under the laws of the State of Alaska for the express purpose of transferring, holding, and managing QS for an eligible community. Adak would be the

only eligible community in the proposed Aleutian Islands CQE Program, thus, the provision identifying the non-profit organization that can serve as the CQE for the community of Adak is specific to Adak. This proposed rule would modify the definition of a CQE at § 679.2 to specify that in addition to meeting the eligibility criteria established for CQEs currently defined at § 679.2, an Aleutian Islands CQE would also need to be the non-profit corporation defined at § 680.2 as the Adak Community Entity that is formed for the purpose of holding the allocation of Western Aleutian Islands golden king crab made to Adak under the provisions of § 680.40(a)(1). The current Adak Community Entity is the ACDC. The Council recommended that the entity eligible to hold the Western Aleutian Islands golden king crab allocation (i.e., the Adak Community Entity) would best be suited to serve as the eligible CQE for Adak, because the overall responsibility of the entity is to hold an exclusive fishery allocation for use on behalf of Adak. This responsibility mirrors the responsibility of a non-profit organization that serves as a CQE.

Consistent with the definition of a CQE at § 679.2, an Aleutian Islands CQE would need to meet the three existing requirements that define a CQE. First, the non-profit organization would need to be incorporated after April 10, 2002, the date the Council took final action on the GOA CQE Program. Second, the community represented by the non-profit organization would need to be listed in Table 21 to part 679. Third, the CQE would need to be approved by NMFS to obtain by transfer and hold QS, and to lease IFQ resulting from the QS on behalf of an eligible community (see regulations at § 679.41(l) for the CQE application process).

The ACDC was incorporated after April 10, 2002. Therefore, it would meet the first requirement for a CQE defined at § 679.2. Should the ACDC dissolve, or otherwise cease to be designated as the Adak Community Entity, then a new Adak Community Entity could form to hold the Western Aleutian Islands golden king crab allocation and represent Adak for purposes of the proposed Aleutian Islands CQE Program. This new entity would need to be incorporated after April 10, 2002, to meet the first requirement for a CQE. This proposed rule would amend Table 21 to part 679 to list Adak to meet the second requirement for a CQE, and the Aleutian Islands CQE would need to be approved by NMFS under existing regulations at § 679.41(l)(3) to meet the third requirement.

Consistent with the regulation established for the GOA CQE Program at § 679.41(l)(3), the non-profit organization (i.e., the ACDC) would apply to NMFS for eligibility as a CQE. The application would need to demonstrate proof of support from the community that the non-profit organization is seeking to represent. The specific procedure for the community to demonstrate its support for a CQE is described in the Administrative Oversight section of the preamble. Once an application to become a CQE has been approved, then that CQE would be eligible to receive and hold QS for community members to use as IFQ. With certain exceptions (see “Transfer and Use Restrictions” and “Sale Restrictions” in this preamble for additional detail), the QS would need to remain with the CQE. NMFS would issue the IFQ annually to the CQE. The CQE could lease IFQ under the mechanisms described in this proposed rule (see “Transfer and Use Restrictions” in this preamble for additional detail). Consistent with regulations at § 679.41(l)(2), an Aleutian Islands community could not be represented by more than one CQE.

3. Individual Community Use Caps

Community use caps limit the amount of halibut QS and sablefish QS that each eligible community, as represented by a CQE, may purchase and hold. In the GOA CQE Program, the CQE individual community use cap is limited to an amount of QS equal to the individual IFQ use cap. GOA CQEs are limited to 1 percent of the Area 2C halibut QS and 0.5 percent of the combined Area 2C, 3A, and 3B halibut QS. GOA CQEs also are limited to 1 percent of the Southeast sablefish QS and 1 percent of all combined sablefish areas QS. If the Council were to mirror the approach taken in the GOA in establishing CQE use caps for Area 4B halibut and Aleutian Islands sablefish, then it would have established the same halibut and sablefish use caps for an Aleutian Islands CQE as those in place for an individual QS holder. However, under the existing IFQ Program, an individual QS use cap of 1.5 percent exists for halibut for Area 4 as a whole, and there are no individual QS use caps for Area 4B halibut QS. Similarly for sablefish QS, a 1.0 percent use cap exists for all sablefish areas (BSAI and GOA) as a whole, and there is no individual QS use cap for Aleutian Islands sablefish QS. The Council instead opted to specify use caps for an Aleutian Islands CQE that are applicable to the Area 4B halibut QS and Aleutian Islands sablefish QS.

The Council recommended, and this proposed rule would establish, CQE use caps for halibut and sablefish, respectively, equal to 15 percent of the Area 4B halibut QS pool (1,392,716 QS units) and 15 percent of the Aleutian Islands sablefish QS pool (4,789,874 QS units). This proposed rule would modify regulations at § 679.42(e)(6) and (f)(5) to establish the applicable use caps for the Aleutian Islands CQE. In recommending these use caps the Council considered a range of options to limit the maximum amount of QS

an Aleutian Islands CQE could hold (see Section 2.6.2.3 of the RIR for additional detail). The Council recommended limiting QS holdings by the Aleutian Islands CQE, on behalf of Adak, to a use cap that would provide an adequate opportunity for communities to purchase and hold sufficient QS for leasing the resulting IFQ to benefit the community. The Council considered the recommended use cap as not so restrictive as to discourage communities from purchasing and holding QS.

The Council also considered the potential effects on existing QS holders in recommending use caps. The use caps accommodate existing QS holders who are concerned that shifting potential QS holdings to communities could disadvantage individual fishermen by reducing the amount of QS available to them in the QS market. The Council's purpose and need for this proposed action notes that allowing Adak, a non-CDQ community, to purchase Area 4B halibut and Aleutian Islands sablefish QS for lease to eligible fishermen would help minimize adverse economic impacts on this community and help provide for the sustained participation by the community and individuals in the halibut and sablefish IFQ fisheries. Section 2.6.2.3 of the RIR prepared for this proposed action notes that approximately 45 percent of the Aleutian Islands sablefish IFQ and 15 percent of the Area 4B halibut IFQ are not harvested on an annual basis. These data suggest that under the proposed use cap the Aleutian Islands CQE would be able to purchase QS that is not currently being used to yield IFQ by existing participants. Therefore, the Council and NMFS expect potential competition between individual QS holders and the CQE would be limited.

This proposed rule would modify Table 21 to this part and add a regulation at § 679.42(e)(9) to limit the transfer or use of Aleutian Islands sablefish QS by the Aleutian

Islands CQE representing the eligible community of Adak. Existing regulations at § 679.42(f)(4) would limit the transfer or use of halibut QS by the Aleutian Islands CQE to the IFQ regulatory area (e.g., Area 4B) designated in Table 21 to this part. These limits support a principal goal of the current GOA and proposed Aleutian Islands CQE Programs to improve the access of residents of the eligible communities to local resources. Therefore, the Council recommended limiting the use of halibut and sablefish QS to those management areas that are adjacent to the CQE eligible community in the Aleutian Islands. Only IFQ regulatory Area 4B, for halibut, and IFQ regulatory area Aleutian Islands, for sablefish, are adjacent to the Aleutian Islands.

4. Cumulative Community Use Cap

This proposed rule would establish a cumulative community use cap that would limit the amount of halibut QS and sablefish QS that all Aleutian Islands CQEs combined could purchase and hold collectively. The Council selected, and NMFS proposes, a 15 percent cumulative use cap, the largest of the three caps the Council considered, because the halibut and sablefish catch limits are not fully prosecuted in Area 4B and the Aleutian Islands, respectively. Under the proposed action, Adak is the only eligible community; therefore, the community use cap of 15 percent of the Area 4B halibut QS pool (1,392,716 QS units) and 15 percent of the Aleutian Islands sablefish QS pool (4,789,874 QS units) also would serve as the cumulative community use cap. This provision would limit cumulative community ownership of QS in the Aleutian Islands as an additional measure to reduce the potential increase in QS price that could result if additional new CQEs sought to purchase QS up to their respective communities' use cap(s) in the Aleutian Islands. Since Adak is the only eligible community at this time, this provision

would serve to limit the potential holding of all CQEs should there be future development of small, remote, coastal communities in the Aleutian Islands.

The Council also considered whether it was appropriate to phase in the cumulative community use caps as was done for the GOA CQE Program. Under the GOA CQE program, CQEs are limited to a cumulative community use cap that began as a maximum of 3 percent of the total halibut QS and 3 percent of the total sablefish QS in each GOA IFQ regulatory area. This initial cumulative use cap increased by 3 percent per year for 7 years to a maximum of 21 percent of the total halibut QS pool and 21 percent of the total sablefish QS pool in each GOA IFQ regulatory area effective beginning in 2012. Therefore, all CQEs in the GOA are now subject to the maximum cumulative community use cap. Based on the fact that only one community is eligible under the proposed Aleutian Islands CQE Program, and past experience with the GOA CQE Program indicating that CQEs have not purchased large sums of QS initially, the Council did not recommend a phased-in cumulative use cap.

This proposed rule would modify regulations at § 679.42(e)(6) and (f)(5) to remove regulatory text describing the mechanism for phasing in the use cap for GOA CQE communities that is outdated and no longer applicable. The rule clarifies that GOA CQEs are now subject to a 21 percent use cap for halibut and sablefish QS in the GOA.

5. Transfer and Use Restrictions

The following provisions would establish restrictions on the type of blocked QS that a CQE could purchase; the type of vessel category QS that a CQE could purchase; the permanent transfer of QS from a CQE once QS is held; who can lease IFQ from a

CQE; how much IFQ can be used by an individual lessee; and how much IFQ can be used on an individual vessel.

a. Block Limits

Two block provisions would apply to an Aleutian Islands CQE under this proposed rule. The first block provision would allow an Aleutian Islands CQE to purchase both blocked and unblocked Area 4B halibut QS and Aleutian Islands sablefish QS, without restrictions on the size of blocked QS that may be held. Blocked QS are aggregates of small units of QS that were designated as blocks when they were initially issued and that cannot be subdivided upon transfer. Blocked QS typically is less expensive and therefore more attractive to new entrants as an initial investment in the IFQ Program. The existing GOA CQE Program prohibits CQEs from purchasing very small blocks of halibut QS in Areas 2C and 3A. Current regulations also prohibit purchase of small blocks of sablefish QS in the Southeast Outside, West Yakutat, Central GOA, and Western GOA regulatory areas. Prohibitions on the size of QS blocks available to GOA CQEs accommodate the interests of prospective new entrants in those areas. These small blocks of QS are specified at § 679.41(e) as the number of QS units initially issued as blocks that could be combined or “swept-up” to form a single block or a “sweep-up” limit.

The Council did not recommend, and NMFS is not proposing, restrictions on the size of QS blocks an Aleutian Islands CQE could purchase. The Council declined to recommend block size restrictions after reviewing data from the RIR for proposed Amendment 102 (see Section 2.6.2.4 for additional detail). Only 4 of the 61 blocks of Aleutian Islands sablefish catcher vessel QS equate to a number of QS units that would

exceed the Aleutian Islands sweep-up limit. About two-thirds of the blocks of Area 4B halibut QS would exceed the Area 4B sweep-up limit. Therefore, implementing a restriction on the purchase of small sweep-up blocks by an Aleutian Islands CQE would greatly limit an Aleutian Islands CQE from purchasing blocked Aleutian Islands sablefish QS. Much of the blocked QS is issued as small blocks that are less than the sweep-up limit. Similarly, about one-third of the Area 4B blocked halibut QS is issued as blocked QS that is less than the sweep-up limit. Therefore, restricting an Aleutian Islands CQE from purchasing small sweep-up blocks would significantly impact the amount of halibut and sablefish QS available for purchase. In addition, over the most recent period available for analysis (2000 through 2010) approximately 45 percent of the Aleutian Islands sablefish IFQ was harvested and 85 percent of the Area 4B halibut IFQ was harvested on an annual basis. These data suggest that the potential impact on new entrants of allowing an Aleutian Islands CQE to purchase these small sweep-up blocks of QS would be limited because not all QS is being used to harvest halibut and sablefish IFQ currently. Because existing regulations at § 679.41(e)(4) and (5) do not limit the size of Area 4B halibut and Aleutian Islands sablefish QS blocks that a CQE can hold, no change in regulations would be necessary to implement this provision.

The second block provision would limit the number of QS blocks the Aleutian Islands CQE could hold. This limit would be the same as the limit currently applied to a GOA CQE. Under the current GOA CQE Program, each community represented by a CQE is limited to holding, at any point in time, a maximum of 10 blocks of halibut QS and 5 blocks of sablefish QS in each IFQ regulatory area for halibut and sablefish. The Council recommended retaining the current block holding limits applicable to GOA

CQEs for an Aleutian Islands CQE because large portions of the QS in the Aleutian Islands are available only in blocked shares. Therefore, an Aleutian Islands CQE could hold 10 blocks of Area 4B halibut QS, and 5 blocks of Aleutian Islands sablefish QS. Limiting the Aleutian Islands CQE to existing unblocked QS would effectively limit the QS available to a small portion of the total QS that is typically higher priced than the more available blocked QS. The proposed limits would provide additional opportunities for an Aleutian Islands CQE to purchase QS beyond those that constrain current individual QS holders. In recommending this provision, the Council balanced the objectives of this new program to promote community access to QS with concerns about protecting the interests of individual new entrants to the fishery. No change to existing regulations at § 679.42(g)(1)(ii) would be necessary to implement this provision.

b. Vessel Category Restrictions

The proposed action would apply to the Aleutian Islands CQE the same regulations on the vessel categories of QS that currently apply to CQEs in Areas 3A and 3B of the GOA (i.e., the Central and Western GOA). Specifically, an Aleutian Islands CQE could purchase and hold all categories of Area 4B halibut catcher vessel QS (B, C, and D share QS), and all categories of Aleutian Islands sablefish catcher vessel QS (B and C share QS). In the GOA CQE Program, those CQEs representing communities in Southeast Alaska (Area 2C) may not hold D share QS. This restriction was intended to limit the potential competition between CQEs and entry level fishermen for D share QS. A greater portion of the total Area 2C QS is issued as D share relative to Areas 3A, 3B, and 4B, and D share QS is more commonly purchased by new participants in Area 2C than in Areas 3A, 3B, and 4B.

As noted in the final rule implementing the GOA CQE Program, the Council and NMFS found no clear evidence demonstrating a potential conflict between the limited number of new IFQ Program entrants and CQEs in Area 3B (69 FR 23681, April 30, 2004). Similarly, the final rule implementing Amendment 94 to the GOA FMP amended the GOA CQE Program to allow CQEs representing communities in Area 3A (i.e., the Central GOA) to hold D share halibut QS based on a subsequent review that did not demonstrate a conflict with opportunities for new entrants (78 FR 33243, June 4, 2013). The Council determined that allowing an Aleutian Islands CQE to hold D share QS would not conflict with new entrants in the Aleutian Islands. Section 2.6.2.4 of the RIR prepared for this proposed action notes that there is little market demand for D share QS in the Aleutian Islands. Approximately 70 percent of the D share halibut QS in Area 4B is not harvested on an annual basis. These factors indicate there is likely to be minimal competition between individuals and an Aleutian Islands CQE for D share QS in the Area 4B halibut QS market. Because existing regulations at § 679.41(g)(5) restrict CQEs from holding D share QS in Area 2C, no changes to the regulations are necessary to implement this provision.

This proposed action would not limit the amount of D share halibut QS that an Aleutian Islands CQE may hold. Under regulations currently applicable to D share QS purchases in Area 3A (Central GOA), GOA CQEs are subject to a cumulative limit on the amount of D share QS holdings equal to the total D share QS that were initially issued to individual residents of Area 3A CQE communities. No such limit applies to GOA CQEs holding D share QS in Area 3B. The Council considered recommending a limit on the amount of D share QS an Aleutian Islands CQE could hold to an amount equal to the

total D share QS that were initially issued to individual residents of eligible Aleutian Islands CQE communities. The Council did not limit the amount of D share QS an Aleutian Islands CQE could hold because residents of the only CQE eligible community in the Aleutian Islands (i.e., Adak) were not initially issued any halibut or sablefish QS. At the time the IFQ Program was being developed, Adak was a military installation, and it did not have a civilian population with documented landings during the IFQ Program qualifying years. Therefore, the Council recommended that restrictions on the amount of D share halibut QS a CQE community can hold not apply to an Aleutian Islands CQE. Because existing regulations at § 679.41(g)(5)(iii) restrict CQEs from holding more than a specific amount of D share QS in Area 3A, no changes to the regulations are necessary to implement this provision.

Annually, an Aleutian Islands CQE could transfer the halibut and sablefish IFQ derived from QS. The transferred IFQ would be leased on an annual basis, as is currently the requirement in existing CQE regulations. This proposed rule would allow the IFQ derived from B and C share QS to be fished on any size vessel. This provision is currently applicable to the existing GOA CQE Program. The Council recommended applying this same standard to the Aleutian Islands CQE for the same reasons as those established for the GOA CQE Program: to facilitate the use of the IFQ on the wide range of vessel types fishing in rural communities. Limiting an Aleutian Islands CQE to the vessel category requirements for fishing IFQ derived from the QS it holds could increase demand and price competition for QS among the CQE and other QS holders, particularly for C share QS, because many vessels in the eligible communities tend to be within this size range. Broadening the use of IFQ derived from community-held QS among vessels

of various sizes could reduce this potential competition. IFQ derived from CQE-held B and C share catcher vessel QS could be fished from a vessel of any size regardless of the QS vessel category from which the IFQ was derived. This provision would apply only while the QS is held by the CQE. The vessel category requirements for use of the QS would apply once again if the QS is transferred from a CQE to a qualified recipient that was not a CQE. The proposed rule would modify regulations at § 679.42(a)(2)(iii) to specify that Area 4B IFQ derived from B and C share QS held by a CQE could be harvested on a vessel of any length.

Action 2 of this proposed rule would allow Area 4B D share halibut IFQ to be harvested on a vessel equal to or less than 60 ft (18.3 m) LOA. This limitation on the size of vessel that may be used to harvest IFQ derived from D share halibut QS is applicable to both CQE and non-CQE D share QS holders in Area 4B, and is addressed in the section on Action 2 in this preamble.

c. Sale Restrictions

This proposed rule would apply the same regulations for a CQE to transfer QS in the Aleutian Islands as apply to a CQE transfer of QS in the GOA. An Aleutian Islands CQE could only transfer its catcher vessel QS to an individual or initial QS recipient eligible to receive QS under the IFQ Program or to another eligible CQE in the Aleutian Islands CQE Program. An Aleutian Islands CQE could only transfer its QS according to the provisions set forth in the existing IFQ Program regulations at § 679.41(g)(7) and (8). Under this proposed rule, Adak would be the only community eligible to be represented by a CQE in the Aleutian Islands; therefore a CQE representing Adak would only be able to transfer its catcher vessel QS to an individual or initial recipient. An Aleutian Islands

CQE could not transfer Area 4B halibut QS or Aleutian Islands sablefish QS to any of the GOA CQEs eligible to hold QS under the GOA CQE Program, because those CQEs are prohibited under existing regulations from purchasing QS outside the GOA. An Aleutian Islands CQE would only be able to transfer QS for one of the following purposes: 1) to generate revenues to sustain, improve, or expand the program; or 2) to liquidate the CQE's QS assets for reasons outside the program. Should an eligible community transfer their QS for purposes not consistent with these purposes, the CQE administrative entity would not be qualified to purchase and hold QS on behalf of that community for a period of 3 years. Thus, implementation of this provision for Aleutian Islands CQEs would mirror transfer provisions for the GOA CQEs.

Regulations at § 679.41(g)(7) provide that a CQE may transfer QS: 1) to generate revenues to provide funds to meet administrative costs for managing the community QS holdings; 2) to generate revenue to improve the ability of residents within the community to participate in the halibut and sablefish IFQ fisheries; 3) to generate revenue to purchase QS to yield IFQ for use by community residents; 4) to dissolve the CQE; or 5) as a result of a court order, operation of law, or as part of a security agreement.

Existing regulations at § 679.41(g)(8) require that if the Regional Administrator determines that a CQE transferred QS for purposes other than to sustain, improve, or expand the opportunities for community residents, then 1) the CQE must divest itself of any remaining QS holdings and will not be eligible to receive QS by transfer for a period of 3 calendar years after the effective date of final agency action on the Regional Administrator's determination; and 2) the Regional Administrator will not approve a CQE to represent the eligible community in whose name the CQE transferred QS for a

period of 3 years after the effective date of the final agency action on the Regional Administrator's determination. The 3-year restriction is intended to discourage CQEs from speculating in the QS market or using potential assets to fund other unrelated projects.

These restrictions encourage the CQE community to hold its QS as a long-term asset to provide access to and benefits from fisheries over time. The restrictions provide the CQE some flexibility to respond to unanticipated circumstances and to act in its best interest and the interests of community residents.

Consistent with the current QS transfer approval process for CQEs, under the proposed rule, NMFS would approve the transfer of QS held by an Aleutian Islands CQE on behalf of a community only if the community for which the CQE holds the QS authorizes that transfer. This authorization would need to be in the form of a signature on the Application for Transfer of QS/IFQ to or from a Community Quota Entity (CQE) by an authorized representative of the governing body of the community. The purpose of the authorization is to ensure that the community is fully aware of the transfer, because of the consequences of the restrictions explained above.

Under existing regulations applicable to CQEs, if subsequent information is made available to NMFS that confirms a transfer of QS is made by an Aleutian Islands CQE for reasons other than to sustain, improve, or expand the opportunities for community residents, or to comply with a court order, operation of law, or security agreement, then NMFS will withhold annual IFQ permits on any remaining QS held by the CQE on behalf of that community. NMFS will also disqualify that CQE from holding QS on

behalf of that community for 3 calendar years following the year in which final agency action adopting that determination is made.

As under existing regulations applicable to CQEs, NMFS would not impose this restriction on an Aleutian Islands CQE until the CQE had received full administrative due process, including notice of the potential action and the opportunity to be heard. An initial administrative determination (IAD) proposing an adverse action would only become final agency action if the CQE failed to appeal the IAD within 60 days, or upon the effective date of the decision issued by the Office of Administrative Appeals. The procedures for appeal are provided at § 679.43. No regulatory changes are required to implement these existing CQE requirements.

d. Use Restrictions

Consistent with the regulations for the GOA CQE program, this proposed rule would establish limitations on the use of QS and IFQ assigned to an Aleutian Islands CQE. However, this proposed rule would provide some additional flexibility on the use of IFQ derived from QS held by an Aleutian Islands CQE.

Current regulations applicable to GOA CQEs require that IFQ derived from QS held by a CQE be leased to an eligible community resident represented by a CQE. As required by regulations at § 679.2, an eligible community resident must maintain a domicile in one of the CQE communities for the 12 months preceding the time when the assertion of residence is made to be considered eligible to receive IFQ. This 12-month domicile requirement has been difficult for individuals to meet in some of the smaller GOA CQE communities, because many of these communities do not have year-round economies. Some residents live outside the community for a period or season, even if

their principal home is in the community. Similar conditions exist in the Aleutian Islands CQE-eligible community of Adak. While many vessels have landed catch in Adak in the past, not all vessel owners or crew were Adak residents. For example, the most recent available data indicates that in 2011, two holders of Area 4B halibut QS and one holder of Aleutian Islands sablefish QS reported an Adak address. However, data from 2011 indicates that 13 persons landed Area 4B halibut IFQ in Adak during that same year (see Section 2.6.1 of the RIR for additional detail).

The proposed rule would allow an Aleutian Islands CQE to lease any IFQ derived from their QS to either eligible community residents of Adak or non-residents for a period of up to 5 years after the effective date of the final rule, if implemented. After the 5-year period, the CQE would be required to lease the annual IFQ derived from QS it holds only to eligible community residents of Adak.

The Council recommended limiting the ability for an Aleutian Islands CQE to lease IFQ to non-CQE residents after 5 years to provide adequate time to accrue benefits to the community of Adak through deliveries, provide crew opportunities for residents, and earn revenue that could assist the purchase of additional QS. After the 5-year period, the CQE would be limited to leasing to persons meeting CQE residency requirements. The intent of this requirement is to explicitly tie the potential long-term benefits of QS held by an Aleutian Islands CQE to the residents of Adak. This proposed rule would modify regulations at § 679.41(g)(6) and § 679.42(e)(8) and (f)(7) to implement these IFQ lease requirements for Aleutian Islands sablefish QS and Area 4B halibut QS.

This proposed rule would also relieve requirements for an Aleutian Islands CQE, which are currently applicable to GOA CQEs, that an eligible community resident of a

CQE community leasing IFQ have 150 days experience on board a vessel working as part of the harvesting crew in a U.S. commercial fishery. An eligible community resident is defined at § 679.2 as a person who is a citizen of the U.S.; maintains a domicile in one of the communities listed in Table 21 to part 679 for the 12 months preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country; and is an IFQ crew member. An IFQ crew member is defined in regulations at § 679.2 as any individual who has at least 150 days experience working as part of the harvesting crew in any U.S. commercial fishery, or any individual who receives an initial allocation of QS. Regulations at § 679.41(d) require that for an individual to be eligible to receive QS or IFQ by transfer, that individual must submit an Application for Eligibility to Receive QS/IFQ to obtain a Transfer Eligibility Certificate (TEC). A TEC requires that the individual be a U.S. citizen and approved by NMFS as an IFQ crewmember.

The Council recommended removing the 150-day experience requirement for eligible community residents of Adak to accommodate younger residents of Adak who may seek employment, but lack the 150 days of experience as a crew member. Many younger fishermen have experience operating a vessel out of Adak fishing subsistence halibut, but in the western Aleutian Islands there are few commercial fisheries in which they can gain the necessary number of days of experience as crew members, compared to what is available for residents of GOA communities. This is in part due to fewer fishermen operating out of the Aleutian Islands on whose vessels one might be employed as a crew member.

The Council recommended that under this proposed rule an eligible community resident receiving IFQ derived from QS held by an Aleutian Islands CQE would have to hold a TEC, but that NMFS would not apply the 150-day criteria for the eligible community resident to receive the TEC for purposes of receiving IFQ from an Aleutian Islands CQE. This proposed rule would modify the definition of an eligible community resident at § 679.2 to state that a person would need to be an IFQ crew member only if that person is receiving halibut or sablefish IFQ that is derived from QS held by a CQE on behalf of an eligible community in the GOA. This proposed rule would also modify regulations at § 679.41(d)(6) to state that NMFS would not disapprove an application for a TEC if a person does not meet the 150-day criteria, provided the person attests that he or she is an eligible community resident of Adak and that person is receiving only IFQ from an Aleutian Islands CQE for Area 4B halibut or Aleutian Islands sablefish. NMFS would change the Application for Eligibility to Receive QS/IFQ (the application for a TEC) to allow an applicant to attest they have been a resident of Adak, AK, for a minimum of 12 months prior to the date of the application. Persons who are not eligible community residents of Adak would need to continue to meet the 150-day requirement to be eligible to receive a TEC and receive IFQ derived from the QS held by an Aleutian Islands CQE.

On June 28, 2013 (78 FR 39122) NMFS proposed revisions to the definition of eligible community resident at § 679.2 under a separate proposed rule to implement a halibut catch sharing plan for Areas 2C and 3A. If this proposed rule to implement the Aleutian Islands CQE Program is approved and effective prior to the effective date of regulations implementing the halibut catch sharing plan, NMFS will modify the

definition of eligible community resident at § 679.2 as proposed in this rule. If the regulations to implement the halibut catch sharing plan are effective prior to the approval of regulations to implement an Aleutian Islands CQE, the final rule to implement the Aleutian Islands CQE Program will specify the required revisions to the definition of eligible community resident that is in effect at that time.

The Aleutian Islands CQE would use the same Application for a Non-Profit Corporation to be Designated as a Community Quota Entity (CQE) as in the existing GOA CQE Program. However, NMFS will separate the existing Application for Transfer of QS/IFQ to or From a Community Quota Entity (CQE) into two application forms: one for transfer of QS to and from a CQE and the other for a CQE to transfer IFQ to or from an eligible community resident or non-resident. NMFS will also modify the Application for Eligibility to Receive QS/IFQ to include the eligibility requirements specific to individual residents of Adak who wish to lease IFQ from the Aleutian Islands CQE. These changes will clarify application requirements and distinguish the residency status of persons applying to receive IFQ from the Aleutian Islands CQE. NMFS would continue to review each transfer application form to ensure that it meets regulatory criteria. The approved lease holder would receive an IFQ permit specifying the amount of IFQ pounds they are permitted to harvest.

Consistent with regulations applicable to the GOA CQE Program, an individual who receives IFQ derived from QS held by a CQE may not designate a hired master to fish the community IFQ; the individual must be on board the vessel when the IFQ is being fished. This provision is intended to ensure that the potential benefits of QS held by communities are realized by the IFQ lease holder. Individuals who hold leases of IFQ

from communities would be considered IFQ permit holders and would be subject to the regulations that govern other permit holders, including the payment of annual fees as required under § 679.45.

e. Individual and Vessel Use Caps

This proposed action would not modify vessel use caps currently applicable to vessels fishing either halibut or sablefish IFQ derived from CQE-held QS. This provision also applies to the GOA CQE Program. Under regulations at § 679.42(h), a vessel may not be used to harvest more than 50,000 pounds (22.7 mt) of IFQ derived from QS held by a CQE. In addition, a vessel that harvests IFQ derived from CQE-held QS is subject to overall vessel use caps described at § 679.42(h). In effect, a vessel could not use more than 50,000 pounds of halibut IFQ and 50,000 pounds of sablefish IFQ derived from QS held by a CQE during the fishing year. A vessel could be used to harvest additional IFQ from non-CQE-held QS up to the overall vessel use caps applicable in the IFQ Program, if the overall vessel use caps are greater than 50,000 pounds. If the vessel use caps in the IFQ Program are lower than 50,000 pounds in a given year, then the lowest vessel use cap would apply. The intent of this provision is to ensure a broad distribution of CQE IFQ among community fishermen and to limit the amount of IFQ that may be leased to those individuals who already hold QS or lease IFQ from another source. Because existing regulations at § 679.42(h) apply to all CQEs, which would include the proposed Aleutian Islands CQE, no additional regulatory changes are required to implement this provision.

6. Joint and Several Liability for Violations

Consistent with current regulations applicable to GOA CQEs, both the Aleutian Islands CQE and the individual fisherman to whom the CQE leases its IFQ would be considered jointly and severally liable for any IFQ fishery violation committed while the individual fisherman is fishing the CQE leased IFQ. This joint and several liability would be analogous to the joint and several liability currently imposed on IFQ permit holders and any hired masters fishing the permit holders' IFQ.

7. Performance Standards

The performance standards for the proposed Aleutian Islands CQE Program would be the same as those established for the GOA CQE Program, and are described in Section 2.6.2.5 of the RIR (see ADDRESSES). These performance standards serve as guidance to the public in how the Council intends that CQE QS and IFQ be used. The performance standards describe the CQE Program goals and allow the CQE to describe the steps to meet those goals. The performance standards are focused on ensuring that residents have an equal opportunity to benefit from the CQE Program and that the CQE operates in a manner that maximizes benefits to the community. As guidance, compliance is voluntary and not implemented in regulation. CQE performance is monitored through the CQE annual report and evaluated through periodic review of the CQE Program. The benefits of monitoring performance using standardized goals are that the CQE is allowed to determine the specific steps to meet self-defined performance criteria within its unique community, and the CQE is able to maintain flexibility in the day to day management of the program.

8. Administrative Oversight

This proposed rule would establish administrative oversight provisions consistent with current regulations applicable to GOA CQEs. Implementation of the Aleutian Islands CQE would require that NMFS 1) review an application of eligibility for a non-profit organization seeking to be qualified as a CQE for a community in the Aleutian Islands and certify the CQE as eligible; and 2) review an annual report detailing the use of QS and IFQ by the CQE and Aleutian Islands fishery participants. The Council intended that the application for eligibility and the annual report would be similar to what is required under the GOA CQE Program. These reviews ensure that the CQEs are adequately representing the communities and that the program is meeting the goals established by the Council.

Unless otherwise specified in this proposed rule, the restrictions that apply to any current QS holder would apply to an Aleutian Islands CQE. If a CQE does not remain in compliance, (e.g., by failing to submit a complete annual report) then NMFS could initiate administrative proceedings to deny the transfer of QS to or IFQ from the CQE. As with other administrative determinations under the IFQ Program, any such determination could be appealed under the procedures set forth in regulations at § 679.43. Regulatory measures to monitor the ability of the non-profit entities to meet the goals of distributing IFQ are incorporated in the existing CQE eligibility application (see § 679.41(l)(3)) and annual reporting requirements (see § 679.5(t)).

a. CQE Eligibility Application

In the GOA CQE Program, each community is required to form a non-profit corporation under the laws of the State of Alaska before submitting an application to NMFS to be eligible as a CQE. Under the CQE Program proposed for the Aleutian

Islands, the Council identified the CQE for the community of Adak as the Adak Community Entity approved by NMFS to hold the allocation of Western Aleutian Islands golden king crab provided under regulations at § 680.40(a)(1), which is the ACDC.. Even though the ACDC is the Adak Community Entity, the ACDC would still be required to submit an application to the NMFS Regional Administrator that contains specific eligibility information. Should the holder of the Western Aleutian Islands golden king crab allocation change, then a new CQE would need to be incorporated and apply to NMFS to be an eligible CQE.

To minimize potential conflict that may exist among non-profit entities seeking qualification as a CQE, NMFS would not consider a recommendation from a community governing body supporting more than one non-profit entity to hold QS on behalf of that community. The specific governing body that provides the recommendation is defined in regulations at § 679.41(l)(3)(v). Because the only identified eligible community in the Aleutian Islands that could qualify under this proposed rule is Adak, and that community is incorporated as a municipality under State of Alaska statutes, the City Council of Adak would recommend the non-profit organization to serve as the CQE for that community.

Consistent with regulations applicable to GOA CQEs at § 679.41(l)(3), a non-profit organization applying to become an Aleutian Islands CQE would need to submit a complete application to become a CQE. Except as discussed below, the Aleutian Islands CQE would complete the same application as that currently required for GOA CQEs. This proposed rule would modify portions of that application at § 679.41(l)(3)(iv) to require that an Aleutian Islands CQE provide a statement describing the procedures that will be used to determine the distribution of IFQ to eligible community residents and

non-residents of Adak, including procedures used to solicit requests from eligible community residents and non-residents to lease IFQ; and criteria used to determine the distribution of IFQ leases among eligible community residents and non-residents and the relative weighting of those criteria. Because this proposed rule would allow an Aleutian Islands CQE to lease IFQ to eligible community residents and non-residents for the first 5 years after the effective date of the final rule, this modification would clarify the mechanisms for considering and distributing IFQ among eligible community residents and non-residents of Adak.

b. Annual Report

Consistent with current annual reporting requirements applicable to GOA CQEs at § 679.5(t), the Aleutian Islands CQE would need to submit an annual report by January 31 to NMFS and to the governing body for the community represented by the CQE (i.e., City of Adak), detailing the use of QS and IFQ by the CQE and fishery participants during the previous year's fishing season. A complete annual report would need to contain all general report requirements and all program specific report requirements applicable to the CQE in accordance with § 679.5(t). This proposed rule would modify § 679.5(t)(5)(v)(B), (C), (E), and (J) to require that the CQE provide a description of the process used to solicit applications from eligible community residents and non-residents; the total number of eligible community residents and non-residents who applied to use IFQ; a detailed description of the criteria used by the CQE to distribute IFQ among eligible community residents and non-residents who applied to use IFQ; and any payments made to the CQE for use of the IFQ by eligible community residents and non-residents. These revisions would be necessary to gather information on the use of IFQ by

persons who are not residents of Adak during the first 5 years after the effective date of this proposed rule. These provisions would not affect GOA CQEs because existing regulations at § 679.42(e)(8) and (f)(7) prohibit persons other than eligible community residents from fishing the IFQ held by GOA CQEs; therefore, no additional reporting of information on non-residents would be required from GOA CQEs.

Consistent with regulations applicable to GOA CQEs at § 679.41(l)(3), if an Aleutian Islands CQE fails to submit a timely and complete annual report, or if other information indicates that the CQE is not adhering to the procedures for distributing or managing QS and IFQ on behalf of a community as established under its application and these regulations, then NMFS would initiate an administrative action to suspend the ability of the CQE to transfer QS and IFQ, and to receive additional QS by transfer. This action would be implemented consistent with the administrative review procedures provided at § 679.43. To ensure that the CQE acts in the best interest of the community and fulfills all the requirements established in its application for eligibility and the regulations for this program, an eligible community is encouraged to provide a CQE monitoring mechanism.

Action 2: Allow D Share IFQ to be Fished on Category C Vessels

The purpose of Action 2 is to allow both CQE and non-CQE D share halibut QS to be fished on vessels less than or equal to 60 ft. LOA (vessel category C) in IFQ regulatory area 4B. In February 2010, the Council approved this proposed action for analysis and took final action in February 2012. This proposed action is commonly known as a “fish-up” action because it allows QS designated for a small vessel category

to be fished “up” on a larger vessel category. In 2007, NMFS implemented a similar action for Areas 3B and 4C (72 FR 44795, August 9, 2007).

The RIR/IRFA prepared for Action 2 (See ADDRESSES) indicates that in 2010 in Area 4B, 12 QS holders were permitted to fish D share IFQ, which equates to 3 percent of the Area 4B QS, but no category D vessels fished. In Area 4B, many of the fishing grounds are located several days of travel time from the nearest available processing facilities in Adak or Dutch Harbor. The distance between the fishing grounds and processing facilities can limit the ability of category D vessels to be used to fish D share IFQ because weather conditions can preclude the safe operation of these relatively small vessels. Additionally, affected fishermen assert that fishing during peak safety conditions may not be possible for small vessels, because processors may not be accepting halibut during the summer, which tends to coincide with the best weather conditions. Therefore, category D vessels may be limited to a substantially shortened season in less safe conditions to harvest their IFQ. As an additional result of these conditions, category D vessel owners have reported that they prefer to purchase B and C share QS because it allows them to use the resulting IFQ on larger vessels.

This proposed action would modify regulations at § 679.42(a)(2)(iv) to allow Area 4B halibut D share QS to be fished on vessels less than or equal to 60 ft (18.3 m) LOA. Implementation of this action in Area 4B would address economic hardship and safety concerns resulting from fishing on small vessels. The proposed action would relieve a restriction placed on IFQ fishery participants in Area 4B, and further the IFQ Program goals by effectively increasing the amount of IFQ that may be harvested by category C vessels. The Council considered, but did not recommend, allowing the use of

D shares on vessels longer than 60 ft (18.3 m) LOA. The use of D shares on vessels longer than 60 ft (18.3 m) LOA was not required to address the specific economic and safety concerns raised by the affected public and considered in the analysis of this action.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 102, the Halibut Act, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the regional council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The proposed action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Impact Review

A Regulatory Impact Review (RIR) was prepared for the actions proposed in this rule to assess all costs and benefits of available regulatory alternatives and considers all

quantitative and qualitative measures. The NMFS guidelines for preparing economic analysis of fishery management actions can be found on the Regulatory Streamline Project website at http://home.nmfs.noaa.gov/sf/regstream/fl_guidance.htm. Copies of the RIRs prepared for the actions proposed in this rule are available from NMFS (see ADDRESSES). Summaries of the RIRs follow.

Action 1 of the proposed rule would redistribute some halibut and sablefish QS from individuals to a CQE representing the community of Adak. The action would result in a voluntary market transaction in which willing buyers and sellers negotiate a mutually beneficial transfer of QS. Assuming the Aleutian Islands CQE purchases QS, section 2.6.4 of the RIR (see ADDRESSES) indicates this transaction is limited by the 15 percent use cap determined by the Council, which in 2011 equated to 261,600 pounds of Area 4B halibut and 410,700 pounds of Aleutian Islands sablefish. However, the net benefits of any amount of QS exchange cannot be determined because the social value and resultant benefits of QS transfer are not quantifiable. Social values may include improved economic circumstances in the community, the stimulation of community activity, and an increase in the economic welfare of community members.

Action 2 of the proposed rule would address safety concerns for small vessel operators and concerns over the ability of D share QS holders in Area 4B to completely harvest their IFQ. These problems can be alleviated to some degree by relaxing the current restriction on vessel length associated with D share QS. As discussed in section 1.8 of the RIR (see ADDRESSES), the proposed action generally has few attributable costs and is expected to produce benefits in the form of small economic efficiencies, greater operational flexibility, and improved safety at sea for a few fishery participants.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the adverse impacts to small entities of a regulation, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1) “certify” that the action will not have a significant adverse effect on a substantial number of small entities, and support such a certification declaration with a “factual basis,” demonstrating this outcome, or (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

This IRFA has been prepared instead of seeking certification. Analytical requirements for the IRFA are described below in more detail. The IRFA must contain:

1. A description of the reasons why action by the agency is being considered;

2. A succinct statement of the objectives of, and the legal basis for, the proposed rule;

3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);

4. A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:

a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;

c. The use of performance rather than design standards; and

d. An exemption from coverage of the rule, or any part thereof, for such small entities.

The “universe” of entities to be considered in an IRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule (and alternatives to the proposed rule), or more general descriptive statements if quantification is not practicable or reliable.

Reason for the Action, Objectives, and the Legal Basis for, the Proposed Rule

Action 1 of the proposed rule targets small, rural, fishing-dependent coastal communities in the Aleutian Islands. The goal is to provide for sustained participation of such communities in the halibut and sablefish IFQ fisheries. While not necessarily a direct result of the implementation of the commercial IFQ program, declines in the number of community fishermen and access to nearby marine resources are ongoing problems in rural communities that may be exacerbated by the IFQ program. The action is intended to alleviate the identified problem and provide the communities with an opportunity to increase participation in the IFQ fisheries. The proposed rule would allow a community with few economic alternatives to hold commercial QS in Area 4B and may help ensure access to and sustain participation in the commercial halibut and sablefish fisheries for that community.

Action 2 of the proposed rule would address safety concerns associated with fishing in halibut management area 4B on small vessels. The objective of the proposed action is to alleviate these safety concerns, in large part, by relaxing the current

restrictions on vessel length associated with D share QS. As D share QS comprises less than 3 percent of the halibut QS in the area, relaxing this restriction would allow for increased economic efficiencies and better safety by allowing D share QS to be harvested along with larger vessel category IFQ.

The Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982 provide the legal basis for this proposed action. The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act require that management programs take into account the social context of the fisheries, especially the role of communities (Sec. 301(a)(8), 303 (a)(9)).

Description and Estimate of Small Entities

The RFA recognizes and defines three kinds of small entities: 1) small businesses, 2) small non-profit organizations, and 3) and small government jurisdictions.

Section 601(3) of the RFA defines a small business as having the same meaning as a small business concern, which is defined under Section 3 of the Small Business Act. A small business or small business concern includes any firm that is independently owned and operated and not dominant in its field of operation. The U.S. Small Business Administration (SBA) has further defined a small business concern as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative,

except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The RFA defines small organizations as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

The SBA has developed size standards to carry out the purposes of the Small Business Act, and those size standards can be found in 13 CFR 121.201. The size standards are matched to North American Industry Classification System industries. On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013, 78 FR 37398 (June 20, 2013). The rule increases the size standard for Finfish Fishing from \$4.0 to 19.0 million, Shellfish Fishing \$4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. *Id.* at 37400 (Table 1). The new size standards were used to prepare the IRFA for this action.

A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$19 million for all its affiliated operations worldwide. The SBA has established principles of affiliation to determine whether a business concern is independently owned and operated. In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or when a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or

ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805, are not considered affiliates of such entities, or with other concerns owned by these entities, solely because of their common ownership.

Affiliation may be based on stock ownership when 1) a person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or 2) if two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners control the

board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as a joint venture if the ostensible subcontractor would perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationships, including contract management, technical responsibilities, and the percentage of subcontracted work.

Action 1 of the proposed rule would apply to communities in the Aleutian Islands that meet the proposed CQE Program eligibility criteria. For the foreseeable future, Adak, Alaska, is the only community in the Aleutian Islands that meets the proposed CQE eligibility criteria. The commercial regulations at § 679.20 define a CQE as a non-profit organization that 1) did not exist prior to April 10, 2002; 2) represents at least one eligible community that is in regulations (Table 21 part 679); and 3) has been approved by the Regional Administrator to obtain by transfer and hold QS, and to lease IFQ resulting from the QS on behalf of an eligible community.

The eligible community of Adak, AK, is considered a small entity (small governmental jurisdictions) under the RFA, since it is a government of a town or village with a population of less than 50,000. The purpose and intent of the proposed action is to have the affected community entity acquire QS and make the resulting IFQ available by lease to eligible harvesters. Those harvesters will be required under provisions of the proposed action to make a series of reports and declarations to NMFS in order to be found eligible to participate. Therefore, those commercial fishing operations would be directly regulated small entities, although their number is unknown at this time. Further,

NMFS anticipates that any economic impacts accruing from the proposed action to these small entities would be beneficial because it is expected to improve access to the IFQ fisheries for affected small entities.

Some businesses operating in the commercial halibut fisheries would be directly regulated by Action 2 of this proposed rule. The proposed action could directly regulate all 12 halibut QS holders who are eligible to transfer D share QS in Area 4B; however, the actual number is expected to be smaller. In 2009, the most recent year of complete ex-vessel price data, the total standard ex-vessel value of the total catch taken in the commercial halibut fishery in Area 4B was about \$3 million. Since this action only affects up to 12 Area 4B D share IFQ holders or potentially 3 percent of the total Area 4B IFQ, the affected IFQ holdings can be valued at about \$90,000. Action 2 would directly affect participants in the Area 4B halibut fishery who hold D share QS, and would indirectly affect an unknown number of owners of larger, category C vessels upon whose vessels those D share QS may be fished up.

At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of entities in the IFQ Program that are “small” based on SBA guidelines, nor the number that would be adversely impacted by the present action. For purposes of the RFA, the IRFA assumes that all directly regulated operations are small.

Small entities regulated by Action 2 may be divided into two, mutually exclusive groups to estimate their size relative to the \$19 million threshold. There are operations that harvest both halibut and groundfish (sablefish is considered a groundfish species, while halibut is not) for which gross revenue data exist. There are also operations that

harvest halibut, but no groundfish, which have gross receipts data. These entities may also harvest species such as herring or salmon.

Section 2.0 of the IRFA (see ADDRESSES) estimates that in 2009 the total gross revenues for fixed-gear catcher vessels by entity, from all sources off Alaska, were not more than \$19 million in gross revenues, which has been the case since 2003. The average gross revenue for the small fixed-gear catcher vessels was about \$510,000. Thus, all of the entities that harvest both halibut and groundfish in Area 4B are under the threshold. Since the IFQ Program limits the amount of annual IFQ that any single vessel may use to harvest halibut and sablefish and the maximum number of QS units an entity may use, NMFS believes that no vessels that harvest halibut exclusively would exceed the \$19 million threshold, either.

Based upon gross receipts data for the halibut fishery, and more general information concerning the probable economic activity of vessels in this IFQ fishery, no entity (or at most a de minimis number) directly regulated by these restrictions could have been used to land fish worth more than \$19 million in combined gross receipts in 2009. Therefore, all halibut vessels have been assumed to be “small entities” for purposes of the IRFA. This simplifying assumption may overestimate the number of small entities, since it does not take account of vessel affiliations, owing to an absence of reliable data on the existence and nature of these relationships.

Based on the low revenues for the average groundfish vessel and the low cap on maximum halibut and sablefish revenues, additional revenues from herring, salmon, crab, or shrimp likely would be relatively small for most of this class of vessels. Therefore, the

available data and IRFA (see ADDRESSES) suggest that there are few, if any, large entities among the directly regulated entities subject to the proposed action.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Implementation of the proposed rule would not change the overall reporting structure and recordkeeping requirements of the vessels in the IFQ fisheries. Under the Council's preferred alternative for Action 1, the eligible community of Adak would have to create and qualify a non-profit entity to purchase, hold, and lease the quota share on behalf of the community in order to participate in the CQE Program. This proposed action would require additional reporting, recordkeeping, and other compliance requirements for the CQE entity. Specifically, to become a CQE, a party must file an Application for a Non-Profit Corporation to be Designated as a Community Quota Entity (CQE) with the State of Alaska. A CQE must then submit an application of eligibility for a non-profit organization seeking to be qualified as a CQE for a community in the Aleutian Islands before the NMFS Regional Administrator may certify the CQE as eligible. Once an eligible CQE is formed, the CQE would be subject to the same recordkeeping and reporting requirements for QS and IFQ transfers as are individuals who hold QS. The CQE also would be required to submit to NMFS an annual report detailing the use of QS and IFQ by the CQE and Aleutian Islands fishery participants.

The cost to the Adak CQE in fulfilling these administrative requirements will vary, but is expected to be minimal relative to the potential benefits. Neither the applications to be designated and certified as a CQE nor the annual report is intended or expected to be significantly burdensome on the entity. In sum, the Adak CQE would not

be mandated to fulfill these reporting requirements unless it chooses to participate in the CQE program, and participation in the program is on a voluntary basis.

Individuals that lease IFQ from the Adak CQE would generally be subject to the same recordkeeping and reporting requirements as are individuals who hold QS. The primary recordkeeping and reporting requirements beyond those required for individual QS holders, as discussed above, are the responsibility of the Adak CQE, which would be listed as the QS holder. These requirements are necessary under the preferred alternative to monitor how QS held by the Adak CQE is being used among eligible harvesters and to collect information necessary to evaluate the program.

No new requirements for recordkeeping and reporting were identified for Action 2 of the proposed rule to relax the current restrictions on vessel length associated with D share QS. Implementation of the proposed rule would not change the overall reporting structure and recordkeeping requirements of the vessels in the IFQ fisheries.

Duplicate, Overlapping, or Conflicting Federal Rules

No federal rules that might duplicate, overlap, or conflict with these proposed actions have been identified.

Description of Significant Alternatives

The alternatives under consideration for Action 1 are provided in section 2.2 of the RIR (see ADDRESSES). Alternative 1 is the no action alternative, and Alternative 2 would allow an eligible non-profit entity representing an eligible community in Area 4B to hold commercial Area 4B halibut and Aleutian Islands sablefish QS for lease to and use by community residents. Although the analysis identifies two primary alternatives, the second alternative contains seven elements and multiple options within each element

that effectively operate as separate alternatives. Thus, the Council was able to specify options within each of the elements under Alternative 2 independent of each other. These elements and options effectively provided the Council with hundreds of different possible combinations, or "alternatives" from which to select a preferred alternative at final action. The Council therefore identified a wide range of elements to be analyzed that would meet the stated objective of this action, while minimizing, to the extent practicable, any adverse impacts on small entities. For a complete treatment of each of these competing elements, options, and suboptions, refer to section 2.6 of the RIR prepared for Action 1 (see ADDRESSES). The comprehensive economic analysis of all of the elements and options under consideration in Alternative 2 is provided in section 2.6.2 of the RIR.

The alternatives under consideration for Action 2 are provided in section 1.7 of the RIR for Action 2 (see ADDRESSES). Alternative 1, the no action or status quo alternative, would continue to require holders of Area 4B D share QS to harvest the resulting IFQ from vessels 35 feet or less in length. Alternative 2, the Council's preferred alternative, would remove the category D vessel size restriction for Area 4B halibut QS. This would allow holders of such QS to harvest the resulting IFQ on larger vessels up to 60 feet in LOA.

NOAA Fisheries is not aware of any alternatives, in addition to the alternatives considered in this proposed rule, that would more effectively meet these RFA criteria.

Impacts on Directly Regulated Small Entities

Since participation in the CQE Program is completely voluntary, Action 1 of this proposed rule is not expected to result in adverse impacts on directly regulated small entities. NMFS expects that there will be some redistribution of halibut and sablefish QS

under the proposed action, because it is intended to have distributional effects among QS holders by promoting the transfer of a limited amount of QS from persons (which may include corporations) to the CQE. The maximum amount of QS that could be purchased by a CQE would be 15 percent of the regulatory Area 4B halibut QS and 15 percent of the Aleutian Islands sablefish QS (Area 4B coincides with the Aleutian Islands). Overall, individuals residing in communities other than Adak, AK, will still realize the majority of the benefit from Aleutian Islands sablefish QS, but more of the revenues will be retained in the community of Adak than are currently, and less in the larger, more accessible communities, or in communities outside of Alaska, where other Aleutian Islands sablefish and Area 4B halibut QS holders reside.

Under Action 1, a non-profit organization representing Adak would be allowed to purchase catcher vessel QS for annual lease to, and use by, fishery participants that could benefit the community. The effect of this action on Adak will depend on the willingness and ability of the Adak CQE to purchase Area 4B halibut QS and Aleutian Islands sablefish QS. Benefits from increased QS holdings could include lower costs to participate in fisheries and help maintain access to and participation in the IFQ fisheries. The distribution of these benefits is regulated in part by the requirement that each fishery participant would be limited to leasing a maximum of 50,000 pounds of each species of IFQ on an annual basis inclusive of privately held IFQ. In addition, each vessel would be limited to using a maximum of 50,000 pounds of each species of IFQ derived from CQE QS on board annually. The combination of these requirements limits the benefits any one fishery participant may gain from the use of CQE-held QS.

The proposed action may also promote efficient utilization of fishery resources by providing an opportunity for additional halibut and sablefish total allowable catch allocated to Area 4B and the Aleutian Islands to be harvested. Amendment 102 is intended to comply with the objectives of National Standard 8 by facilitating long-term access to and participation in the commercial halibut and sablefish fisheries by residents of small, remote, coastal communities in the Aleutian Islands.

All available evidence suggests that by the voluntary nature of the CQE Program and the proposed provisions themselves, there is no potential for proposed Action 1 to impose significant adverse economic impacts on a substantial number of small entities.

Under Action 2 of the proposed rule, retention of the no action or status quo alternative would impose adverse economic impacts on directly regulated small entities. Under the status quo, as described in detail in section 1.7 of the RIR (see ADDRESSES), D share QS holders (all of whom are assumed to be small entities) must fish their quota from boats 35 feet or less in LOA. This requirement puts these entities at some physical and economic risk, owing to the remoteness and severity of weather and sea conditions under which they operate.

Alternative 2, the Council's preferred alternative, seeks to mitigate these adverse economic and operational impacts on directly regulated small entities. It does so by removing the category D vessel-size restriction for Area 4B halibut QS; thus, allowing harvest of the resulting IFQ from vessels better suited to the extremes of this region. By allowing these entities to harvest IFQ derived from D share QS on larger vessels, the action recognizes the unique needs of, and burdens imposed upon, directly regulated small entities in Area 4B, and makes accommodation for these limitations. On the basis

of the foregoing analysis, the proposed alternative (relative to the status quo) appears to be the least burdensome for directly regulated small entities, among all available alternatives.

Collection-of-Information Requirements

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The collections are listed below by OMB control number.

OMB Control Number 0648-0272

Public reporting burden is estimated to average per response two hours for the Application for Eligibility to Receive QS/IFQ.

OMB Control Number 0648-0665

Public reporting burden is estimated to average per response two hours for an Application for Transfer of QS to or from a Community Quota Entity (CQE) and two hours for an Application for a CQE to transfer IFQ to or from an eligible community resident or non-resident.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be

collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments on these or any other aspects of the collection of information to NMFS at the ADDRESSES above, and e-mail to OIRA_Submission@omb.eop.gov, or fax to [\(202\) 395-7285](tel:(202)395-7285).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 5, 2013.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
performing the functions and duties of the
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447.

2. In § 679.2,

- a. Under the definition for “Community quota entity”, revise the introductory text, paragraph (3) and add paragraph (4) and;
- b. Under the definition for “Eligible community”, revise the introductory text, paragraph (2) introductory text and add paragraph (3) and;
- c. Under the definition for “Eligible community resident”, revise paragraph (3)

The revisions and additions read as follows:

§ 679.2 Definitions.

* * * * *

Community quota entity (CQE) (for purposes of the IFQ Program) means a non-profit organization that:

(3) Has been approved by the Regional Administrator to obtain by transfer and hold QS, and to lease IFQ resulting from the QS on behalf of an eligible community; and

(4) Must be the Adak Community Entity as defined at § 680.2 if that non-profit organization represents the eligible community of Adak, AK.

* * * * *

Eligible community means:

* * * * *

(2) For purposes of the IFQ program in the GOA, a community that is listed in Table 21 to this part, and that:

* * * * *

(3) For purposes of the IFQ program in the Aleutian Islands subarea, a community that is listed in Table 21 to this part, and that:

(i) Is a municipality or census designated place, as defined in the 2000 United States Census, located on the Aleutian Islands subarea coast of the North Pacific Ocean;

(ii) Is not an entity identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(D);

(iii) Has a population of not less than 20 and not more than 1,500 persons based on the 2000 United States Census;

(iv) Has had a resident of that community with at least one commercial landing of halibut or sablefish made during the period from 1980 through 2000, as documented by the State of Alaska Commercial Fisheries Entry Commission; and

(v) Is not accessible by road to a community larger than 1,500 persons based on the 2000 United States Census.

* * * * *

Eligible community resident means, for purposes of the IFQ Program, any individual who:

(3) Is an IFQ crew member only if that person is receiving halibut or sablefish IFQ that is derived from QS held by a CQE on behalf of an eligible community in the GOA.

* * * * *

3. In § 679.5, revise paragraphs (t)(5)(v)(B), (C), (E), and (J) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(t) * * *

(5) * * *

(v) * * *

(B) A description of the process used by the CQE to solicit applications from eligible community residents and non-residents to use IFQ that is derived from QS that the CQE is holding on behalf of the eligible community;

(C) The total number of eligible community residents and non-residents who applied to use IFQ derived from QS held by the CQE;

* * * * *

(E) A detailed description of the criteria used by the CQE to distribute IFQ among eligible community residents and non-residents who applied to use IFQ held by the CQE;

* * * * *

(J) For each community whose eligible community residents and non-residents landed IFQ derived from QS held by the CQE, provide any payments made to the CQE for use of the IFQ.

* * * * *

4. In § 679.41, revise paragraphs (d)(6)(i), (g)(6), and (l)(3)(iv) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(d) * * *

(6) * * *

(i) Fewer than 150 days of experience working as an IFQ crew member, unless that person attests in the Application for Eligibility that he or she is an eligible community resident of Adak, AK, who will receive only halibut IFQ in regulatory area 4B or sablefish IFQ in the regulatory area of the Aleutian Islands subarea that is derived from QS held by a CQE on behalf of Adak, AK.

* * * * *

(g) * * *

(6) IFQ derived from QS held by a CQE on behalf of an eligible community:

(i) In the GOA may be used only by an eligible community resident of that community.

(ii) In the Aleutian Islands subarea may be used by any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to [DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE] and only by an eligible community resident of Adak, AK, after [DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE].

* * * * *

(l) * * *

(3) * * *

(iv) A statement describing the procedures that will be used to determine the distribution of IFQ to eligible community residents and non-residents of the community represented by that CQE, including:

(A) Procedures used to solicit requests from eligible community residents and non-residents to lease IFQ; and

(B) Criteria used to determine the distribution of IFQ leases among qualified community residents and non-residents and the relative weighting of those criteria.

* * * * *

5. In § 679.42,

a. Revise paragraphs (a)(2)(iii), (a)(2)(iv), (e)(1), (e)(3), (e)(4), (e)(6), (e)(8), (f)(1) introductory text, (f)(3), (f)(5), and (f)(7), and

b. Add paragraphs (e)(9) and (f)(2)(iii) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) * * *

(2) * * *

(iii) IFQ derived from QS held by a CQE may be used to harvest IFQ species from a vessel of any length, with the exception of IFQ derived from QS in IFQ regulatory areas 3A and 4B that are assigned to vessel category D.

(iv) In IFQ regulatory areas 3B, 4B, and 4C, category D QS and associated IFQ authorizes an IFQ permit holder to harvest IFQ halibut on a vessel less than or equal to 60 ft (18.3 m) LOA.

* * * * *

(e) * * *

(1) No person other than a CQE representing the community of Adak, AK, individually or collectively, may use more than 3,229,721 units of sablefish QS, except if the amount of a person's initial allocation of sablefish QS is greater than 3,229,721 units, in which case that person may not use more than the amount of the initial allocation.

* * * * *

(3) No CQE may hold sablefish QS in the IFQ regulatory area of the Bering Sea subarea.

(4) No CQE may hold more than:

(i) 3,229,721 units of sablefish QS on behalf of any single eligible community in the GOA; or

(ii) 4,789,874 units of sablefish QS on behalf of any single eligible community in the Aleutian Islands subarea.

* * * * *

(6) In the aggregate, all CQEs are limited to holding a maximum of:

(i) 21 percent of the total QS in each regulatory area specified in § 679.41(e)(2)(i) through (e)(2)(iv) of this part for sablefish.

(ii) 15 percent of the total QS specified in § 679.41(e)(2)(v) of this part for sablefish.

* * * * *

(8) A CQE receiving category B or C sablefish QS through transfer and representing an eligible community:

(i) In the GOA may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community on whose behalf the QS is held; and

(ii) In the Aleutian Islands subarea may lease the IFQ resulting from that QS to any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to [DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE] and only to an eligible community resident of Adak, AK, after [DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE].

(9) A CQE representing an eligible community in the Aleutian Islands subarea may receive by transfer or use sablefish QS only in the Aleutian Islands subarea.

* * * * *

(f) * * *

(1) Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person other than a CQE representing the community of Adak, AK, individually or collectively, may use more than:

* * * * *

(2) * * *

(iii) IFQ regulatory area 4B. 1,392,716 units of halibut QS.

(3) No CQE may hold halibut QS in the IFQ regulatory areas 4A, 4C, 4D, and 4E.

* * * * *

(5) In the aggregate, all CQEs are limited to holding a maximum of:

(i) 21 percent of the total QS in each regulatory area specified in §679.41(e)(3)(i) through (e)(3)(iii) of this part for halibut.

(ii) 15 percent of the total QS specified in § 679.41(e)(3)(v) of this part for halibut.

* * * * *

(7) A CQE receiving category B, C, or D halibut QS through transfer:

(i) In an IFQ regulatory area specified in § 679.41(e)(3)(i) through (e)(3)(iii) of this part may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community represented by the CQE.

(ii) In IFQ regulatory area 4B may lease the IFQ resulting from that QS to any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to [DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE] and only to an eligible community resident of Adak, AK, after [DATE FIVE YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE].

* * * * *

6. Revise Table 21 to part 679 to read as follows:

Table 21 to Part 679 – Eligible communities, Halibut IFQ Regulatory Area Location, Community Governing Body that Recommends the CQE, and the Fishing Programs and Associated Areas where a CQE Representing an Eligible Community may be Permitted to Participate.

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
Adak	4B	City of Adak				X		X				
Akhiok	3A	City of Akhiok .		X	X		X			7	2	
Angoon	2C	City of Angoon .	X	X			X		4			
Chenega Bay	3A	Chenega IRA Village.		X	X		X			7	2	
Chignik	3B	City of Chignik .		X	X		X				3	
Chignik Lagoon	3B	Chignik Lagoon Village Council.		X	X		X				4	
Chignik Lake	3B	Chignik Lake Traditional Council.		X	X		X				2	
Coffman Cove	2C	City of Coffman Cove .	X	X			X		4			
Cold Bay	3B	City of Cold Bay.		X	X		X					2
Craig	2C	City of Craig .	X	X			X					
Edna Bay	2C	Edna Bay Community Association.	X	X			X		4			
Elfin Cove	2C	Community of Elfin Cove .	X	X			X					
Game Creek	2C	N/A.	X	X			X		4			
Gustavus	2C	Gustavus Community Association.	X	X			X					
Halibut Cove	3A	N/A.		X	X		X			7	2	
Hollis	2C	Hollis Community Council.	X	X			X		4			

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
Hoonah	2C	City of Hoonah.	X	X			X		4			
Hydaburg	2C	City of Hydaburg.	X	X			X		4			
Ivanof Bay	3B	Ivanof Bay Village Council.		X	X		X					2
Kake	2C	City of Kake.	X	X			X		4			
Karluk	3A	Native Village of Karluk.		X	X		X			7	2	
Kasaan	2C	City of Kasaan.	X	X			X		4			
King Cove	3B	City of King Cove.		X	X		X					9
Klawock	2C	City of Klawock.	X	X			X		4			
Larsen Bay	3A	City of Larsen Bay.		X	X		X			7	2	
Metlakatla	2C	Metlakatla Indian Village.	X	X			X		4			
Meyers Chuck	2C	N/A.	X	X			X		4			
Nanwalek	3A	Nanwalek IRA Council.		X	X		X			7	2	
Naukati Bay	2C	Naukati Bay, Inc.	X	X			X		4			
Old Harbor	3A	City of Old Harbor.		X	X		X			7	5	
Ouzinkie	3A	City of Ouzinkie.		X	X		X			7	9	
Pelican	2C	City of Pelican.	X	X			X		4			
Perryville	3B	Native Village of Perryville.		X	X		X					2
Point Baker	2C	Point Baker Community.	X	X			X		4			
Port Alexander	2C	City of Port Alexander.	X	X			X		4			
Port Graham	3A	Port Graham Village Council.		X	X		X			7	2	
Port Lions	3A	City of Port		X	X		X			7	6	

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
		Lions.										
Port Protection	2C	Port Protection Community Association.	X	X			X		4			
Sand Point	3B	City of Sand Point.		X	X		X					14
Seldovia	3A	City of Seldovia.		X	X		X			7	8	
Tatitlek	3A	Native Village of Tatitlek.		X	X		X			7	2	
Tenakee Springs	2C	City of Tenakee Springs.	X	X			X		4			
Thorne Bay	2C	City of Thorne Bay.	X	X			X		4			
Tyonek	3A	Native Village of Tyonek.		X	X		X			7	2	
Whale Pass	2C	Whale Pass Community Association.	X	X			X		4			
Yakutat	3A	City of Yakutat.		X	X		X			7	3	

N/A means there is not a governing body recognized in the community at this time.
CHPs are Charter halibut permits.